

AMENDED IN ASSEMBLY JUNE 30, 2004

AMENDED IN ASSEMBLY JUNE 9, 2004

AMENDED IN SENATE APRIL 27, 2004

AMENDED IN SENATE APRIL 12, 2004

**SENATE BILL**

**No. 1400**

**Introduced by Senators Romero and Speier**

February 18, 2004

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An act to add Chapter 2.5 (commencing with Section 5072) to Title 7 of Part 3 of the Penal Code, relating to corrections.

LEGISLATIVE COUNSEL'S DIGEST

SB 1400, as amended, Romero. Corrections: Internal Affairs.

Existing law provides for the administration of a system of state prisons under the Department of Corrections within the Youth and Adult Correctional Agency. Existing law establishes the Office of the Inspector General, who is responsible for reviewing departmental policy and procedures for conducting audits of investigatory practices and other audits, as well as conducting investigations of the Department of Corrections and related state offices, as specified. Existing statutory and case law provides for some of the procedures by which public employees may be disciplined. Existing law limits the release of certain types of information relating to public employment, including special provisions that protect against the release of information concerning complaints against peace officers, including correctional officers in state prisons.

This bill would make findings and declarations relating to problems in the investigation and disciplinary processes used by the Department

of Corrections regarding its workforce, and would require the Department of Corrections and the Office of the Inspector General to adopt regulations to remedy various identified aspects of these investigation and discipline processes, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 2.5 (commencing with Section 5072) is added to Title 7 of Part 3 of the Penal Code, to read:

CHAPTER 2.5. CORRECTIONAL EMPLOYEE DISCIPLINE

5072. (a) The Legislature finds and declares all of the following:

(1) The Department of Corrections has an inadequate employee investigation and disciplinary process with shortcomings and barriers to improvement that have been clearly identified.

(2) Specifically, problems exist in the integrity, quality, and timeliness of investigations, and the efficiency, integrity, quality, and timeliness of the disciplinary action process. Furthermore, improvement in these systems has been hampered by the absence of sufficient oversight of the overall investigation and discipline process, the absence of a functional system for evaluating and improving these processes as they have evolved, and by the “code of silence” of correctional employees regarding employee misconduct.

(b) It is therefore the intent of the Legislature in enacting this chapter to eliminate these barriers to improvement, and to eliminate these problems in the operation of employee investigation and discipline systems.

5072.2. (a) The Department of Corrections shall adopt regulations to govern the process by which allegations of employee misconduct are investigated and pursued, through and including the imposition of discipline.

(b) The regulations adopted shall, to the extent possible, do all of the following:

(1) Compel all employees to immediately report misconduct, ensure punishment for anyone who retaliates against a person for reporting misconduct, and otherwise encourage and protect those who report misconduct.

(2) Impose a duty on all employees to cooperate with investigations, including disclosing all associated facts and information, except as explicitly provided by law.

(3) Ensure the accuracy, fairness, and impartiality of investigations, including ensuring that those investigations are free from outside influence and internal conflicts of interest.

(4) Include policies and procedures to guide investigations and the disciplinary action process, and a definitive description of the role and responsibility of each employee in investigations and disciplinary actions.

(5) Ensure swift, reliable, and consistent disciplinary action when wrongdoing occurs.

(6) Create a transparent disciplinary process by disseminating data regarding investigations, disciplinary actions, and the effectiveness of related department processes to the extent permitted by subdivision (c) of Section 832.7.

(7) Provide that every departmental employee, including, but not limited to, those who are responsible for investigations and disciplinary procedures, is properly trained to enforce these regulations and is dedicated to the policies stated in paragraphs (1) to (6), inclusive.

5072.4. In the regulations adopted pursuant to Section 5072.2, the department shall incorporate provisions to do all of the following to eliminate the code of silence:

(a) Seek an outside assessment of the organizational culture of the department, and assistance in facilitating change in that culture.

(b) Require the secretary to inform all wardens in person, and all academy cadets by videotaped message, of the seriousness with which the agency is taking this problem, including communicating the content of this section and the resulting regulations.

(c) Require the director to develop an ethics course to be taught at each prison with special emphasis on combating the code of silence.

~~5072.6. In the regulations adopted pursuant to Section 5072.2, the department shall~~ *The Office of the Inspector General*

1 *shall adopt regulations that* incorporate provisions to do all of the  
2 following to improve the integrity, quality, and timeliness of  
3 investigations:

4 (a) Implement ~~an Office~~ *a Bureau* of Independent Review  
5 within the Office of the Inspector General.

6 (b) Conduct an overall operational review of the Office of  
7 Investigative Services (OIS), also known as the Office of Internal  
8 Affairs, relying on expert assistance. This review shall evaluate  
9 and recommend changes in the roles and responsibilities of the  
10 OIS, how it functions within the department and the Youth and  
11 Adult Correctional Agency, and how it interfaces with other  
12 agencies and functions. In addition to others identified in the  
13 review, the following changes in practice shall be implemented by  
14 the regulations:

15 (1) The ~~Office~~ *Bureau* of Independent Review shall be made  
16 responsible for contemporaneous quality control of OIS  
17 investigations, and for advising the department regarding the  
18 adequacy of each investigation and whether discipline of the  
19 subject of the investigation is warranted.

20 (2) The ~~Office~~ *Bureau* of Independent Review (~~OIR~~) (*BIR*)  
21 shall issue regular, and in no case less than semiannual, reports to  
22 the Governor and the Legislature summarizing its  
23 recommendations concerning its oversight of Youth and Adult  
24 Correctional Agency allegations of internal misconduct and use of  
25 force, including, but not limited to, data on the number, type, and  
26 disposition of complaints made against correctional officers and  
27 staff. The reports shall include a synopsis of each matter reviewed  
28 by the ~~OIR~~; *BIR*, an assessment of the quality of the investigation;  
29 the appropriateness of any disciplinary charges; ~~the OIR's~~, *the*  
30 *BIR's* recommendations regarding the disposition in the case and  
31 when founded, the level of discipline to be afforded; the degree to  
32 which the agency's authorities agreed with the ~~OIR~~ *BIR*  
33 recommendations regarding disposition and level of discipline;  
34 the report of any settlement effectuated and whether the ~~OIR~~ *BIR*  
35 concurred with the settlement; and the extent to which any  
36 discipline was modified after imposition. The reports shall be in  
37 a form which does not identify the agency employees involved in  
38 the alleged misconduct. The reports shall be posted on the  
39 Inspector General's Web site and otherwise be made available to  
40 the public upon its release to the Governor and the Legislature.

1 (c) Bring management control to OIS investigations by  
2 developing specific policies, procedures, and expectations.

3 (d) Issue a confidentiality policy that will protect investigations  
4 from external influences and interference.

5 (e) Conduct statewide recruitment when filling investigator  
6 vacancies.

7 (f) Survey OIS employees and managers to identify  
8 impediments to the investigative process and operational  
9 enhancements.

10 (g) Develop a statewide electronic case management system  
11 for use in contemporaneous tracking and monitoring of  
12 investigations, and as a source of reliable data for ongoing reports  
13 and audits of OIS operations.

14 (h) Develop a centralized Administrative Support Unit within  
15 the OIS to provide essential assistance to conduct continuous  
16 operational review, coordinate and implement changes, and  
17 develop a self-audit tool. This unit shall do all of the following:

18 (1) Evaluate existing OIS policy, procedures, and operating  
19 systems, and coordinate revisions, where needed.

20 (2) Coordinate the development of an Administrative Policies  
21 and Procedures Manual for the OIS.

22 (3) Implement the Case Management System described in  
23 subdivision (g) and implement an OIS self-audit plan.

24 (4) Coordinate training for investigators, and develop  
25 management reports.

26 (i) Using the case management system, the OIS shall develop  
27 reports that capture the number, type, and disposition of employee  
28 misconduct complaints, and shall provide disposition and related  
29 reports to the extent permitted by subdivision (c) of Section 832.7  
30 of the Penal Code to the appropriate oversight and regulatory  
31 agencies, the Legislature, and other interested parties.

32 (j) Develop a special investigations unit within the OIS to  
33 reduce the potential for conflict when investigating misconduct  
34 allegations within the OIS and to optimize management control  
35 over high-profile and other sensitive investigations.

36 (k) Evaluate the existing OIS staff resources and skills, and  
37 align them with newly defined roles and responsibilities.

38 (l) Assess the existing training given OIS agents, and  
39 implement changes so that agents receive training at law  
40 enforcement “industry standard” levels.

(m) Review every aspect of the OIS operations, including continuous self-auditing.

5072.8. In the regulations adopted pursuant to Section 5072.2, the department shall incorporate provisions to do all of the following to improve the efficiency, quality, timeliness, and integrity of the disciplinary process:

(a) Bring in expert assistance from outside ~~the Department of Corrections~~ *of the department* to be employed by the Youth and Adult Correctional Agency to develop and implement necessary and discretionary changes described in this section.

(b) Require changes in the Employment Law Unit at the ~~Department of Corrections~~ *department* that will do all of the following:

(1) Eliminate the use of untrained, nonattorney employment relations officers in presenting cases before the State Personnel Board.

(2) Provide for the assignment of an attorney to a case at the outset.

(3) Redefine the mission, role, and responsibilities of the Employment Law Unit consistent with this section.

(c) Implement a vertical prosecution system that shall include the assignment of an attorney to assist beginning at the investigation stage, and attorney assistance in the drafting of adverse actions and in the presentation of cases before the State Personnel Board.

(d) Streamline and simplify the preparation and review of disciplinary actions prior to service, including clearly defining the roles and responsibilities of each participant in the disciplinary process.

(e) Require written communication from the Secretary of the Youth and Adult Correctional Agency communicating a policy prohibiting disclosure of facts and other information regarding ongoing investigations and pending adverse employment actions.

(f) Ensure that the Employee Misconduct Information System is electronically compatible with the case management system, and reliably maintains disciplinary action data.

(g) Report the number, type, and disposition of adverse action cases and employee discipline cases to the appropriate oversight and regulatory agencies, the Legislature, and other interested parties, to the extent permitted by subdivision (c) of Section 832.7.

(h) Specify policies and procedures regarding all of the following:

(1) Vertical prosecution.

(2) Settlements.

(3) Skelly hearing requirements drawn up with consideration of the Pelican Bay model.

(4) Employees testifying as expert witnesses.

(5) Writs and appeals following State Personnel Board disciplinary action decisions.

(i) Improve the hiring and training of people who work in the disciplinary processes for employees of the ~~Department of Corrections~~ *department* by requiring the department to do all of the following:

(1) Train employment relations officers and wardens in evaluating investigative reports based on the preponderance of evidence standard that applies to administrative actions.

(2) Develop selection criteria and ethical standards for its employment law attorneys, employment relations officers, and its labor relations division positions, and apply those criteria and standards in recruitment selection and training.

(3) Implement a training and orientation program for employment law unit attorneys, and a statewide training program for employment relations officers and labor relations staff charged with employee discipline responsibilities to remedy the deficiencies identified in this chapter.

5073. In the regulations adopted pursuant to Section 5072.2, the ~~Department of Corrections~~ *department* shall incorporate provisions to do all of the following to assure the implementation, monitoring, and continual assessment of the effectiveness of its efforts under this chapter:

(a) Develop and publish procedures mandating quantitative and qualitative reports to the Youth and Adult Correctional Agency on the implementation of this chapter, including objective measures of progress like case results, average investigation time, number of cases not prepared for filing decision prior to statutory time bars, and similar measures.

(b) Require the employment by the Youth and Adult Correctional Agency of an outside expert on employee discipline to monitor the implementation and effectiveness of this chapter,

- 1 including reviewing the reports produced pursuant to subdivision
- 2 (a).

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